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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,264	01/14/2002	Lynette Fouser	22058-532	4514

7590 08/22/2005

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EXAMINER

JIANG, DONG

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/047,264

Applicant(s)

FOUSER ET AL.

Examiner

Dong Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-16, 18, 71 and 73-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-16, 18, 71, 73-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Applicant's amendment filed on 13 June 2005 is acknowledged and entered. Following the amendment, claim 12 and 71 are amended.

Currently, claims 12-16, 18, 71, 73-77 are pending and under consideration.

#### **Withdrawal of Objections and Rejections:**

The rejection of claim 18 under 35 U.S.C. 112, second paragraph, as being indefinite is withdrawn in view of applicant's amendment.

#### **Rejections Over Prior Art:**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12, 14-16, 18, 73-77 remain rejected, and claims 13 and 71 are rejected under 35 U.S.C. 102(e) as being anticipated by Goddard et al., US6,740,520 B2, for the reasons of record set forth in the last Office Action mailed on 17 December 2004, at page 3, and for the reasons below.

Applicants argument filed on 13 June 2005 has been fully considered, but is not deemed persuasive for reasons below.

At page 4 of the response, the applicant argues that claim 12 has been amended to require that the claimed polypeptide include the amino acid sequence of SEQ ID NO:13, and that Goddard does not disclose any amino acid sequence with this feature. This argument is not persuasive for the following reasons. The present SEQ ID NO:13 represents the N-terminal sequence of SEQ ID NO:4, and has one additional Met residue at the N-terminus in comparison to N-terminal sequence of Goddard's polypeptide of PRO19598, which amino acid sequence

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SEQ ID NO:2 is 99.7% identical to the present SEQ ID NO:4 (as addressed in the last Office Action). The only difference between the present SEQ ID NO:4 and Goddard's polypeptide of PRO19598 is that additional Met residue at the N-terminus, which is missing in the prior art sequence. However, besides the teachings of the polypeptide of PRO19598, Goddard also teaches its encoding nucleic acid, a cDNA clone with ATCC Deposit No. PTA-1532 (DNA145887-2849), which sequence is shown Figure 1 and SEQ ID NO:1, and includes upstream sequence from the start codon ATG (underlined). As it is clearly shown in Figure 1, the immediate upstream sequence from the indicated start codon ATG is another ATG. Additionally, Goddard teaches a vector comprising SEQ ID NO:1, a host cell thereof, a process for producing the encoded polypeptides by culturing the host cell under suitable conditions for expression (claims 13 and 15, and columns 6, line 67 to column 7, line 9), and the polypeptide encoded by the cDNA clone PTA-1532 (column 8, lines 1-3). As such, when Goddard's host cell transformed/transfected with the vector comprising said cDNA clone of PTA-1532 is cultured under suitable conditions for expression, the same polypeptide as that of the present SEQ ID NO:4, i.e., with two Met residues at the N-terminus would be inherently and inevitably produced regardless Goddard's prediction of the amino acid sequence of the polypeptide (column 72, line 35). Therefore, the prior art reference inherently anticipates the present claims.

**Conclusion:**

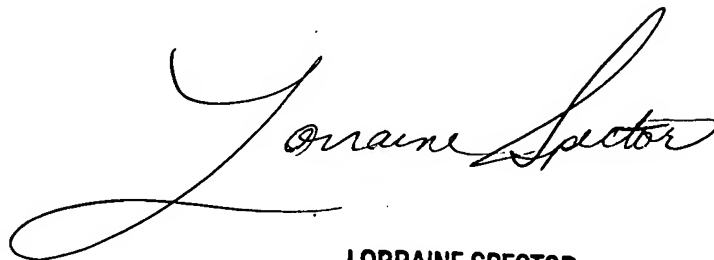
No claim is allowed.

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**Advisory Information:**

Any inquiry concerning this communication should be directed to Dong Jiang whose telephone number is 571-272-0872. The examiner can normally be reached on Monday - Friday from 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached on 571-272-0829. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

A handwritten signature in cursive script, reading "Lorraine Spector". The signature is written in dark ink and is positioned above the printed name and title.

**LORRAINE SPECTOR  
PRIMARY EXAMINER**

Dong Jiang, Ph.D.  
Patent Examiner  
AU1646  
8/16/05